streets for twenty-five years, stipulating that free transfers be issued and eight tickets be sold for twenty-five cents. The plaintiff duly accepted and established a trolley system. In 1918, a strike occurred and the National War Labor Board increased the wages of the plaintiff's employees fifty per cent, and recommended that the city allow an increased fare. The city refused. The company then gave notice to the city that it regarded the franchise as cancelled and increased the fares to five cents a single trip. A bill was filed to enjoin the city from enforcing the terms of the ordinances. *Held,* that the bill must be dismissed. *Columbus Ry. Power & Light Co. v. City of Columbus* (1919) 39 Sup. Ct. 349.

It is well established that a city, acting under statutory authority, may make contracts by which privileges in the streets are granted in consideration of a promise to render services at a fixed charge. *Vicksburg v. Vicksburg Waterworks Co.* (1906) 206 U. S. 496, 27 Sup. Ct. 762; *Cleveland v. Cleveland City Ry.* (1903) 194 U. S. 512, 24 Sup. Ct. 756. The city has no power to terminate such an agreement. *Vicksburg Waterworks Co. v. Vicksburg* (1904) 202 U. S. 453, 26 Sup. Ct. 661. In the principal case, the railway held itself excused from performance of its contract through supervening impossibility due to war conditions. Had that been so, it could have continued operation on the basis of an implied grant for an indefinite period, setting the old rates aside as confiscatory. *Denver Union Water Co. v. Denver* (1917) 246 U. S. 178, 38 Sup. Ct. 278; *Detroit United Railway v. Detroit* (1919) 248 U. S. 429, 39 Sup. Ct. 151. But the War Labor Board merely stated conditions, under which the plaintiff had contracted to operate; and made a recommendation. It made no executive order making performance impossible. See *Metropolitan Water Board v. Dick, Kerr & Co.* [1917] 2 K. B. 1, [1918] A. C. 119; *Moore & Tierney v. Roxford Knitting Co.* (1918, N. D. N. Y.) 250 Fed. 278; see (1918) 27 YALE LAW JOURNAL, 953; (1919) 28 *ibid.* 399. Nor is the present case one of temporary suspension of the duty to perform, as in *Tamplin S. S. Co. v. Anglo-Mexican etc.,* [1916] 2 A. C. 397. To be sure, the old rule holding contractors to the letter of their agreements has been somewhat relaxed, and in exceptional cases courts have given relief from dangers and hardships through the medium of constructive conditions. *Chicago, etc. Ry. v. Hoyt* (1893) 149 U. S. 1, 13 Sup. Ct. 779; *Kronprinzessin Cecilie* (1917) 244 U. S. 12, 37 Sup. Ct. 490, (1917) 27 YALE LAW JOURNAL, 247, 791. But the court in the instant case weighed the fact that no loss had been shown *over the full period of operation,* and decided that this was not a case in which such a condition should be implied. The case thus falls under the general rule that unforeseen difficulties do not excuse performance.

CONTRACTS—THIRD-PARTY BENEFICIARY—MATERIALMEN AND BUILDER'S BOND.—The defendant surety company bound itself to the owner of a building, as obligee, to see that the building contractor should perform all of his duties to the owner, one of these duties being that he should pay all claims for labor and material. It was expressly provided in the bond that the surety was to be notified of any act on the part of the principal that might involve loss to the surety, immediately upon knowledge of such an act coming to the owner or his supervising architect. No notice of this sort was ever given. The materialman, being unpaid, brought suit against the surety company on the bond. *Held,* that the materialman might maintain suit. *Forburger Stone Co. v. Lion Bonding & Surety Co.* (1919, Neb.) 170 N. W. 897.

See COMMENTS, *supra,* p. 798.

DAMAGES—"DUTY" TO MITIGATE—RECOVERY OF EXPENSES OF DENIAL IN ACTION FOR LIBEL.—The defendant published a libel concerning the plaintiff, which the

plaintiff denied by advertisement in newspapers. The plaintiff sought to recover the costs of such advertisements as an item of damage. The defendant moved to strike the item from the complaint. *Held,* that the plaintiff could recover the expense of his denials. *Den Norske Americkalinje Actiesselskabet v. Sun Printing and Publishing Association* (1919, N. Y.) 122 N. E. 463.

Opinions and text books abound with the assertion that an injured plaintiff is under a "duty" to mitigate his damages. 13 *Cyc.* 71, 73; Sutherland, *Damages,* 311. This "duty" is proclaimed in the case of injury to the person. *Flint v. Connecticut Hassam Paving Co.* (1918) 92 Conn. 576, 103 Atl. 840 (hiring physician). Likewise in breach of contract. *Feeney & Bremer Co. v. Stone* (1918) 89 Or. 360, 171 Pac. 569. He whose property has been negligently injured is said to be under this "duty," although where the injury is intentional, the devotion of the common law to the protection of property releases the plaintiff from his so-called obligation. *Borden et al. v. Carolina Power, etc. Co.* (1917) 174 N. C. 72, 93 S. E. 442; *City of Jackson v. Wilson* (1916) 146 Ga. 250, 91 S. E. 63. If this relation of the plaintiff to the defendant were a *duty* in the strict, legal sense, it would follow that if he failed to make a reasonable attempt to mitigate, he would himself be *subject to an action for damages.* But such is not the consequence. If he fails to mitigate his damages, he is only under a legal *disability* to collect from the defendant for the items which might reasonably have been prevented. Furthermore, but entirely separate and distinct, the plaintiff has a legal *power,* by attempting to mitigate, to create in the defendant a duty to *pay the costs* of his reasonable attempts. The confounding of legal duty with legal disability, and a failure to discern this legal power, led the court in the principal case over a very circuitous route, to reach a near goal. They did not want to hold that the plaintiff was under a "duty" to publish denials, in the sense that if he had failed to publish them, he could not have recovered full damages for his injury. But they did want the plaintiff, having published the denials, to recover the expense of such publication. They cut the knot with the alarming statement that this is one of the few instances where "duty" and "right" are not correlative. The correct solution of the problem seems to be that a libeled plaintiff is like one whose realty has been intentionally injured, in that he does not labor under a disability to collect damages if he fails to publish denials, but that he nevertheless does possess the entirely separate and distinct power, by publishing such denials, to impose a duty upon the defendant to pay the expenses so incurred. Perhaps the rule as to libel, however, should not be treated as exceptional. In no case does the law disable a plaintiff on account of a failure to mitigate, where the means are very expensive and the results speculative. *American Smelting and Refining Co. v. Riverside Dairy and Stock Farm* (1916, C. C. A. 8th) 236 Fed. 510; *Youmans v. City of Hendersonville* (1918) 175 N. C. 574, 96 S. E. 45; *Louisville and Nashville R. R. v. Kerrick* (1917) 178 Ky. 486, 199 S. W. 44. And certainly the effect of an expensive published assertion of innocence is not easy to calculate. On the other hand, if a libeled plaintiff wishes to use reasonable means to deny his guilt, it would seem just to compel the defendant to foot the bill even though the effectiveness of the effort is in doubt. *Peck v. Chicago Railways* (1915) 270 Ill. 34, 110 N. E. 414.

HUSBAND AND WIFE—ABANDONMENT—WIFE'S IMMUNITY FROM ALIENATION BY HUSBAND.—A poor debtor abandoned his wife without fault on her part; he later attempted to sell to his father certain chattels in the possession of the wife. Statutes exempted the property left by an absconding debtor in the hands of his wife from execution by his creditors, and allowed the wife as head of the family to "manage, sell and incumber his property." The father sued on the